

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD A. BROWNE and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 95-2945; Submitted on the Record;
Issued February 6, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that any disability due to his April 11, 1991 employment injury ceased after November 4, 1994.

The Board finds that the Office met its burden of proof in terminating appellant's compensation because the medical evidence establishes that he had no continuing work-related disability.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office's burden

¹ 5 U.S.C. §§ 8101-8193.

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant, then a 48-year-old tool and parts attendant, filed a notice of traumatic injury on April 11, 1991, claiming that while lifting an industrial vacuum cleaner from a truck he felt pain in his left shoulder and numbness in his left hand. The claim was accepted for a cervical and left shoulder strain as well as left carpal tunnel syndrome.

Subsequently, the employing establishment identified a light-duty position on May 11, 1992, but by the time the Office referred appellant for vocational rehabilitation, there was no light duty available because the employing establishment's base was scheduled for closing. The rehabilitation counselor therefore considered retraining. Because appellant had a college degree in English, the counselor recommended retraining in a secondary school education program, costing approximately \$10,000.00 at Temple University, which would provide appellant with a teaching certificate at the end of the 18-month course.

Appellant's family physician, Dr. Earl Brown, referred appellant to Dr. Corey K. Ruth, an orthopedic surgeon, who approved a job analysis of the teaching position on August 23, 1994 at the request of the Office and discharged appellant from treatment. Dr. Ruth also signed a prescription form stating that appellant's neck strain was resolved and releasing appellant to full duty with no restrictions. On August 26, 1994 the Office requested that Dr. Ruth review the statement of accepted facts dated November 16, 1993 and clarify his opinion, specifically asking if appellant could be released back to full duty as a parts and tools attendant.

In a note dated September 1, 1994, Dr. Ruth stated that appellant's work status was: "full-duty, parts/tools attendant, no restrictions, resolved cervical strain/resolved left carpal tunnel syndrome." On September 21, 1994 the Office issued a notice of proposed termination based on Dr. Ruth's reports.

Appellant responded to the notice with a letter dated October 4, 1994 stating that Dr. Ruth misunderstood appellant's request to be released for work -- appellant had told Dr. Ruth he was ready to go back to work but appellant meant that he felt capable of performing the duties of a teacher. Appellant's attorney stated in a letter dated October 6, 1994 that there was a miscommunication among Dr. Ruth, the rehabilitation counselor and appellant, "resulting in the notes upon which the proposed termination is based."

⁵ *Mary Lou Barragy*, 46 ECAB 781 (1995).

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

Subsequently, appellant submitted an October 4, 1994 report in which Dr. Ruth stated that appellant could return to work full time on light duty and added: "This patient states that he never completely recovered from his work-related accident and that I misquoted him last visit." On November 4, 1994 the Office terminated appellant's benefits on the grounds that appellant had fully recovered from his work-related injury. The Office noted that Dr. Ruth's latest report did not negate his previous opinion.

Appellant requested an oral hearing, which was held on May 5, 1995. Appellant testified that he had told Dr. Ruth: "I [a]m fine and I [a]m ready to go back to work." However, appellant stated that he meant, not that he was fully recovered, but that he was ready to take on the teacher training and resultant teaching position, because he thought that he would not have been offered the retraining if he were able to return to his previous job. Appellant submitted a series of reports from Dr. Ruth, dated November 8, 1994, January 10 and 23, March 7, April 4, May 2, 30 and June 27, 1995 and a consultation report from Dr. Raoul G. Biniaurishvili, a neurologist.⁷

On July 5, 1995 the hearing representative denied the claim on the grounds that the medical evidence established that appellant's disability resulting from his April 11, 1991 injury had ceased after November 4, 1994. The hearing representative noted that Dr. Ruth had twice stated his opinion that appellant had recovered from the work-related injury.

The Board finds that Dr. Ruth's reports dated August 23 and September 1, 1994 are sufficient to meet the Office's burden of proof in terminating appellant's compensation. Appellant was referred to Dr. Ruth by his family physician and was treated by Dr. Ruth from October 1994 through June 1995. Dr. Ruth's earlier 1994 reports were clear that appellant was released for full-time light-duty employment in his previous position as a tool and parts attendant and his later reports did not detract from this opinion.

Rather, the reports dated in 1995 simply reiterated the phrase, "full-time light duty" if available. The May 30, 1995 report imposed a 50-pound lifting restriction, but appellant testified that his job as a tool and parts attendant required lifting up to 40 pounds. As the hearing representative found, the Office should be able to rely on appellant's own treating physician, who twice stated that appellant had recovered from his work-related conditions.

The consultation report from Dr. Biniaurishvili provided a history of the 1991 work injury and related appellant's complaints of "almost constant" pain in his neck since then, but did not address appellant's capability for work. Therefore, his report has no probative value.

Appellant argued that the termination was based on an incorrect report from Dr. Ruth because he misunderstood the purpose of appellant's office visit in August 1994, which was to be released for the teaching certificate program. However, appellant's testimony at the hearing showed that the misunderstanding was his alone. The Office informed appellant that because

⁷ The hearing representative asked appellant to submit a description of his position as a tool and parts attendant, but appellant's attorney responded that appellant did not have a copy in his possession.

Dr. Ruth had released appellant for his usual job as a tool and parts attendant, retraining for another position was not appropriate.

In his October 4, 1994 report, Dr. Ruth related appellant's comment that he had been misquoted, but did not elaborate or offer any further explanation. Nor did Dr. Ruth subsequently retract his initial opinion that appellant's work injury had resolved. Further, the hearing representative questioned appellant at the hearing about the supposed misunderstanding and found that he could not determine from appellant's testimony whether Dr. Ruth was given any erroneous information. Finally, appellant failed to provide any corroboration from Dr. Ruth that his 1994 conclusion had been based on a misunderstanding.

Inasmuch as the Office complied with its procedures in issuing a notice of proposed termination on September 21, 1994 and terminating compensation effective November 11, 1994 and Dr. Ruth's uncontroverted reports clearly indicated that appellant was capable of full-time, light-duty work, the Board finds that his conclusion is sufficient to carry the Office's burden of proof.⁸ Therefore, the Board finds that the Office properly terminated appellant's compensation.

The July 5, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 6, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).